



3-1-1993

For the Best or Worst Interests of Baseball: The Commissioner's Powers Lie in Doubt

Craig S. Pedersen

Follow this and additional works at: <https://digitalcommons.lmu.edu/elr>



Part of the [Law Commons](#)

Recommended Citation

Craig S. Pedersen, *For the Best or Worst Interests of Baseball: The Commissioner's Powers Lie in Doubt*, 13 Loy. L.A. Ent. L. Rev. 587 (1993).

Available at: <https://digitalcommons.lmu.edu/elr/vol13/iss3/6>

This Notes and Comments is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Entertainment Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

FOR THE BEST OR WORST INTERESTS OF BASEBALL: THE COMMISSIONER'S POWERS LIE IN DOUBT

I. INTRODUCTION

*So did they rid their rock of their tyrant, whom on the whole they had liked very well. But everything has its day.*¹

The role of the Baseball Commissioner in managing Major League baseball has been thrown into a state of uncertainty. The office is being reassessed due to the culmination of events stemming from incidents occurring in 1992. Specifically, Major League team owners challenged Commissioner Fay Vincent, both formally and informally, causing him to eventually resign from the office of Commissioner.² Consequently, the formerly broad, sweeping powers of the Commissioner's office are in grave doubt.³

The embattled Commissioner's problems did not arise overnight. Indeed, Commissioner Vincent's entire three-year term was marked by both calamity and controversy.⁴ Over that period of time he has encountered more dilemmas than past baseball commissioners: the 1989 San Francisco earthquake that interrupted the World Series, player controversies involving Pete Rose's gambling and Steve Howe's continued drug abuse, shady investigative maneuvers of New York Yankees owner George Steinbrenner, and the dispute over foreign investment in the business of baseball.⁵ However, none of these dilemmas affected the Commissioner's office as profoundly as Vincent's decision to realign the Western and Eastern

1. WILLA CATHER, *DEATH COMES FOR THE ARCHBISHOP* 113 (Vintage Classics ed., 1990) (1927) (The novel relates the fictional story of a Native American tribe which rises up against a priest who, during his tenure in their parish, virtually enslaves them, while at the same time enhancing their understanding of life. A parallel can be drawn to the power of the Baseball Commissioner's office over Organized Baseball, the benefits the sport derives from that power, and that sport's eventual frustration with the restrictions placed upon it by that power.)

2. Larry Whiteside, *Vincent Quits As Baseball Chief*, *BOSTON GLOBE*, Sept. 8, 1992, Sports, at 1.

3. *See id.*

4. Allen Barra, *Fay's Way: In the Best Interests of the Game?*, *L.A. WEEKLY*, Sept. 11, 1992, at 31.

5. *Id.*

Divisions of the National League.⁶ In so doing, Vincent unilaterally overrode the National League Constitution by invoking the broad power outlined in the Major League Agreement of 1921, allowing the Commissioner to act "in the best interests of baseball."⁷

Acting under the auspices of this clause should not have been alarming, as baseball commissioners have frequently resorted to this power in a string of previous court cases.⁸ In each prior instance, the judiciary has protected, and sometimes even expanded, the "best interests" power.⁹ However, in the most recent challenge to that power, the unexpected occurred: Judge Suzanne B. Conlon granted the Chicago Cubs, who vehemently opposed league realignment, a temporary restraining order.¹⁰ This prevented Vincent from implementing his plans and effectively obliterated the possibility of the leagues' realignment in time for the 1993 baseball season.

In implementing this decision, Judge Conlon seriously challenged the long-held assumption that the Commissioner's powers are invulnerable.¹¹ Years of consistent behavior on the part of the Major League ball clubs, coupled with favorable case law, had fostered the image that baseball

6. The owners of the National and American League ball clubs eventually voted to show their lack of confidence in Fay Vincent as a Commissioner. Murray Chass, *Owners, In An 18-9 Vote, Ask Vincent To Resign*, N.Y. TIMES, Sept. 4, 1992, at B7. The vote was largely the result of disfavor with Vincent's handling of the realignment situation, but other factors, such as Vincent's perceived pro-player stance on labor issues and the manner in which the disciplinary hearings against Steve Howe were administered, also played a part. The situation also resulted in the owners taking affirmative steps to form a committee to restructure the Commissioner's office. *Id.*

7. *Chicago Nat'l League Ball Club v. Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *8-9 (N.D. Ill. July 23, 1992) (vacated as moot on Sept. 24, 1992). When the Major League Agreement was drafted, the "best interests" clause was not included; instead, the language allowed the Commissioner to act only when he found an act or conduct to be "detrimental" to baseball. The change to "best interests" occurred in 1964. *Id.* at *2-3.

8. See generally *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527 (7th Cir. 1978) (holding Baseball Commissioner may override an owner's sale of player contracts), *cert. denied*, 439 U.S. 876 (1978); *Atlanta Nat'l League Baseball Club v. Kuhn*, 432 F. Supp. 1213 (N.D. Ga. 1977) (holding that Commissioner may suspend an owner from participation in ball club business as a disciplinary measure); *Milwaukee Am. Ass'n v. Landis*, 49 F. Supp. 298 (N.D. Ill. 1931) (holding that Commissioner is authorized to disapprove an option contract of ball club assigning existing agreement with player, but reserving right to recall).

9. *Finley*, 569 F.2d at 538. Here the court looked at the parties' respective understandings of the clause in order to conclude that the action taken by the Commissioner was appropriate.

10. *Chicago Nat'l League Ball Club v. Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *20.

11. *Id.* at *13. The judge stated that "[u]nder Illinois rules for construing contracts, it is clear that the broad authority granted the Commissioner . . . is not as boundless as he suggests." *Id.*

commissioners had absolute authority over the sport.¹² Now, one decision has threatened that interpretation of the Commissioner's powers.

This Comment will interpret Judge Conlon's decision in *Chicago National League Ball Club v. Vincent*¹³ against a backdrop of modern Major League baseball history.¹⁴ The Major League Agreement of 1921, which granted the Baseball Commissioner the authority to investigate and take remedial action against any "act," "transaction," or "practice" deemed not in the best interests of baseball, figures prominently in that history.¹⁵ This Comment will also explore the ramifications the court decision and the Commissioner's subsequent resignation from office will have in shaping the scope of the office for future commissioners.¹⁶

Though the *Vincent* case was later vacated,¹⁷ it ironically continues to influence Major League baseball due to the disordered chain of events that occurred in the wake of the decision. Taking advantage of the judicial blow to Vincent, certain team owners took their own legally suspect action.¹⁸ They convened prior to the end of Vincent's term of office to vote on his ouster,¹⁹ an action specifically prohibited by the Agreement.²⁰

While Vincent originally contested these actions, he eventually relented, and, on September 8, 1992, resigned from his position, leaving the coalition of hostile ball clubs free to restructure the powers of that office.²¹ Vincent's resignation, however, had nothing to do with the merits of the case;²² instead, it was due to the rigors of the challenge on

12. Jeffrey A. Durney, *Fair or Foul? The Commissioner and Major League Baseball's Disciplinary Process*, 41 EMORY L.J. 581, 582 (1992).

13. No. 92-64398, 1992 U.S. Dist. LEXIS 11033 (N.D. Ill. July 23, 1992) (vacated as moot on Sept. 24, 1992).

14. See *infra* parts II-IV.

15. HAROLD SEYMOUR, 2 BASEBALL: THE GOLDEN AGE 322 (1971). The issue that arises most consistently in each courtroom contest is the scope of the Commissioner's authority.

16. See *infra* notes 157-91 and accompanying text.

17. See *supra* note 7 and accompanying text.

18. Chass, *supra* note 6, at B7.

19. *Id.*

20. *Id.* Technically, the subject matter of the vote was not his firing; it was actually a vote of no-confidence. However, Vincent contended (and there is some factual support that indicated) that even convening to discuss the possibility is contrary to the Agreement. *Id.*

21. Whiteside, *supra* note 2, at 1.

22. In fact, at least one former federal district judge, Frank McGarr, who is now in private practice and made the decisions in both the *Finley* and *Atlanta Braves* cases, opined prior to the decision in the *Vincent* case that it appeared that Vincent had the authority to proceed with the realignment, although he noted that Judge Conlon would have to make the actual decision. *Judge Gives Vincent Time To Reply*, UPI, July 8, 1992 (BC Cycle), available in LEXIS, Nexis Library, UPI File.

the Commissioner, and his concern with how the lawsuit would affect the office.²³ Upon his resignation, he candidly stated:

It would be an even greater disservice to baseball if I were to precipitate a protracted fight over the office of the [C]ommissioner . . . [a]fter the vote at the meeting last week, I can no longer justify imposing on baseball, nor should baseball be required to endure, a bitter legal battle.²⁴

Furthermore, Judge Conlon vacated her decision solely because the interim management committee rescinded Vincent's realignment order following his resignation.²⁵ In her view, the issues involved are far from moot and are bound to be relitigated at the appropriate time, perhaps as soon as a new Commissioner is appointed and takes some kind of unilateral action.²⁶ Because the court's decision said nothing regarding the owners' legally suspect action, they have been left essentially unsupervised to devise an organizational scheme for Major League baseball that will be drastically different. Since the Commissioner's office has made no attempt to prevent the team owners from reorganizing, the future remains uncertain.²⁷

II. HISTORY OF THE BASEBALL COMMISSIONER OFFICE

A. *The First Czar*

From its inception, broad, far-reaching authority was vested in the Baseball Commissioner's office. Judge Kenessaw Mountain Landis, the first Commissioner of Baseball, arguably exerted the most control over the sport.²⁸

The events at the World Series in 1919 convinced the team owners that an impartial power figure would be needed to administer the sport.²⁹ During the Series, which pitted the Chicago White Sox against the Cincinnati Reds, it was discovered that at least seven members of the White Sox had accepted bribes from well-known gambling magnates in exchange

23. Whiteside, *supra* note 2, at 1.

24. *Id.*

25. Telephone interview with Suzanne B. Conlon, Federal District Court Judge for the Northern District of Illinois (Mar. 1, 1993).

26. *Id.*

27. Murray Chass, *Baseball: Newly Empowered Owners Rescind Order To Realign*, N.Y. TIMES, Sept. 25, 1992, at B9.

28. Barra, *supra* note 4, at 31.

29. SEYMOUR, *supra* note 15, at 310-11.

for promising to deliberately lose the World Series to the Reds.³⁰ Public confidence in the game of baseball, already waning as a result of increased gambling activities and duplicity on the part of players, stood to be irreversibly shaken unless something was done to restore faith in the game.³⁰ The vast majority of owners agreed the most expedient solution was to hand over the disciplinary and business reigns to a financially disinterested public figure who would act as an arbitrator.³¹ Judge Landis quickly became the top contender for the position.³²

Landis refused to accept the position unless the owners agreed that his powers would extend to "control over whatever or whoever had to do with baseball."³³ In so doing, he ensured that his word would be accepted as final in virtually every matter related to the sport. To comply with Landis' ultimatum, the owners, in signing the Major League Agreement of 1921, not only gave the Commissioner full power to investigate and take action against any "act," "transaction," and "practice" deemed "detrimental to baseball," but also contractually ceded their right to bring lawsuits against the Commissioner questioning his judgment.³⁴

Consequently, Commissioner Landis was sufficiently empowered to take quick, comprehensive action against the offenders involved in what had come to be known as the "Black Sox" scandal.³⁵ After taking office, he banned the seven White Sox players who had been accused of accepting bribes, as well as an eighth player who apparently had knowledge of his teammates' duplicity.³⁶ Owners and players were comfortable with the precedent, and Landis, in the course of his twenty-three year tenure, proceeded to expel more players and other parties than any succeeding commissioner.³⁷ He had clearly established a comprehensive framework for the authority of the Commissioner's office. Some commentators even referred to Landis as the "czar" of Organized Baseball.³⁸

30. *Id.* at 301.

30. *Id.* at 310.

31. *Id.* at 311.

32. *Id.* at 314. Judge Landis' favorable treatment of organized baseball in an antitrust suit originating in his court was the principal reason for his placement on the list of possible appointees to the office being contemplated by the owners. *Id.* at 312.

33. Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 532 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978).

34. SEYMOUR, *supra* note 15, at 322.

35. *Id.* at 330.

36. *Id.*

37. DAVID L. PORTER, BIOGRAPHICAL DICTIONARY OF AMERICAN SPORTS: BASEBALL 324 (1987).

38. SEYMOUR, *supra* note 15, at 323.

B. The First Challenge

In 1931, the authority of the Commissioner's office was contested for the first time in *Milwaukee American Ass'n. v. Landis*.³⁹ At the time, the baseball code required each Major League club to give the other clubs the option to "waive or refuse to waive" on a player before executing an unconditional release of a player.⁴⁰ A caveat permitted Major League teams to assign players to Minor League teams on optional agreements⁴¹ if done within two years of the original contracting between the Major League Club and the player.⁴²

The owner of the St. Louis Cardinals acquired controlling interests in several Minor League clubs, then transferred a player between those clubs to avoid the scrutiny of the other Major League teams.⁴³ The suit arose after the Commissioner's investigation revealed that these transfers were occurring beyond the two-year time frame, leading him to find them violative of the waiver provision of the baseball code.⁴⁴

The dispute was resolved in Landis' favor.⁴⁵ The court held that the Major League Agreement of 1921 endowed the Commissioner with broad power to arbitrate controversies and secure parties' compliance with the rules of baseball.⁴⁶ The court went further, however, finding the provisions of the Agreement are "so unlimited in character that we can conclude only that the parties did not intend so to limit the meaning of conduct detrimental to baseball, but intended to vest in the [C]ommissioner jurisdiction to prevent *any conduct destructive of the aims of the code.*"⁴⁷ The court's opinion even concluded that it was the clear intent of the Agreement's drafters "to endow the [C]ommissioner with all the attributes of a benevolent but absolute despot and all the disciplinary powers of the

39. 49 F. Supp., 298 (N.D. Ill. 1931).

40. *Milwaukee Am. Ass'n v. Landis*, 49 F. Supp. 298, 302 (N.D. Ill. 1931). By waiving or refusing to do so, the management of each team had the opportunity to indicate interest in negotiating with a particular player. If no teams took advantage of this opportunity, that player could be traded to the minor leagues. *Id.*

41. An optional agreement allowed a Major League team to recall a player from a Minor League club assignment at will. *Id.* at 301.

42. *Id.*

43. *Id.* at 300, 302.

44. *Id.* at 300.

45. *Landis*, 49 F. Supp. at 304.

46. *Id.* at 301.

47. *Id.* at 302 (emphasis added).

proverbial *pater familias*.”⁴⁸ In so doing, the court validated the scope of the Commissioner’s power as contemplated by the architects of that position, the team owners. The move to create such a powerful figure was unprecedented in any commercial industry, but the court chose not to second-guess the intent of the Agreement’s framers.⁴⁹ Although the owners’ relinquishment of authority is traceable to their desperate desire to salvage the baseball business, their intent to relinquish the reigns of the baseball business to one man was clear.⁵⁰

C. Restraints and Restoration

Judge Landis’ liberal powers surely made him an infamous figure during his tenure and allowed him to shape much of what constitutes modern-day baseball business practices.⁵¹ However, his extensive power was not conferred on his immediate successor.⁵² At the end of Landis’ tenure in 1944, the team owners of both leagues convened to exercise their rights under the Major League Agreement to reformulate the powers of commissioners.⁵³ They struck the provision in the Agreement which precluded recourse against the Commissioner in the courts, and excised the broad power to remedy matters “detrimental” to baseball.⁵⁴

As a result of these changes, subsequent commissioners A.B. “Happy” Chandler and Ford Frick played significantly reduced roles in the business

48. *Id.* at 299 (emphasis added). A *pater familias*, in Roman law, was the head or master of the family. BLACK’S LAW DICTIONARY 1126 (6th ed. 1990). Such an authority invests in its possessor the ultimate power and “dominion” over the “family.” *Id.*

49. Seymour notes that Judge Landis became the first “industry doctor.” SEYMOUR, *supra* note 15, at 323. However, the position sparked interest in industry czars and led to the creation of similar positions in other entertainment fields, including the Academy of Motion Picture Arts and Sciences. *Id.*

50. *Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *2.

51. SEYMOUR, *supra* note 15, at 367. See also Daniel Okrent, *On the Money*, SPORTS ILLUSTRATED, Apr. 10, 1989, at 41.

52. *Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *2.

53. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 533 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978) (citing the Major League Agreement, Art. IV, § 2 (1975)). The league owners, in their adoption of the Major League Agreement of 1921, bound themselves to a provision that barred any alterations to the scope of a Commissioner’s authority while that Commissioner was serving his term. Only at intervals between terms of office could alterations be made. *Id.* The owners ignored this provision in the *Vincent* situation, taking a vote of no confidence with the intent that it be binding, well before the Commissioner’s term was to expire. *Chass*, *supra* note 6, at B7.

54. *Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *3.

of baseball, to the sport's detriment.⁵⁵ Because Frick would not take an aggressive stance, the sport became heavily administered by the owners. This resulted in player unionization, minor league instability, and Congressional subcommittees forming to investigate organized baseball's possible violations of federal antitrust laws.⁵⁶ Frick finally realized that in order to ensure the sport's entertainment image, commissioners must be able to act in response to matters detrimental to baseball. Upon his retirement in 1964, Frick requested that the league owners consider amending the Major League Agreement to again strengthen the office of the Commissioner.⁵⁷

Consequently, the Commissioner's powers were restored to the stature they enjoyed during the Landis era.⁵⁸ Not only was the provision denying owners recourse in the courts reinstated, but the Commissioner's power was strengthened by another language modification in the Agreement.⁵⁹ The phrase bestowing on the Commissioner the authority to affirmatively challenge acts or practices "detrimental to the best interests of baseball" was altered to allow the Commissioner the ability to act where a practice is "not in the best interests of baseball."⁶⁰ This was a substantive change from the previous language, allowing broader interpretation by the Commissioner, and failing to bind him to any objective definition of what constitutes the "best interests" of baseball.⁶¹

D. Second Round of Challenges

Despite these decisive modifications, the intermittent years of relaxed oversight left the scope of the Commissioner's authority exposed to challenge. Twice, in the late 1970's, during Commissioner Bowie Kuhn's term, the owners of Major League ball clubs took issue with the Commissioner's power to take punitive and remedial action against them.⁶²

55. DAVID QUENTIN VOIGHT, 3 *AMERICAN BASEBALL: FROM POSTWAR EXPANSION TO THE ELECTRONIC AGE* 93-95 (1983).

56. *Id.* at 95.

57. *Id.* at 96.

58. *Finley*, 569 F.2d at 534.

59. *Vincent*, No. 92-C4398, U.S. Dist. LEXIS 11033, at *2.

60. *Id.*

61. *Finley*, 569 F.2d at 539.

62. See generally *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527 (7th Cir. 1978); *Atlanta Nat'l League Baseball Club v. Kuhn*, 432 F. Supp. 1213 (N.D. Ga. 1977).

1. Finley v. Kuhn

In *Finley v. Kuhn*,⁶³ the court held that Kuhn was acting within his powers as Commissioner in voiding the Oakland club's sale of three player contracts.⁶⁴ Charles Finley, owner of the Oakland Athletics, had orchestrated the sale of Oakland's contract rights to players Joe Rudi, Rollie Fingers, and Vida Blue to other teams for a total of \$3.5 million just prior to the June 15, 1976 trading deadline.⁶⁵ This transaction was significant because, had the trading deadline passed, Finley would have had to offer the contracts to all American League clubs, beginning with the lowest-ranked, at the sum of \$20,000 each.⁶⁶

Commissioner Kuhn responded by nullifying the transactions, noting that the contract sales signified a disturbing trend: financially stable ball clubs buying talent at sums prohibitive to other teams in the place of developing their own talent through "traditional and sound methods of player development and acquisition."⁶⁷ Kuhn found that wholesale purchasing of prime talent was not in the best interests of baseball, and would undermine some teams while shortchanging the American public.⁶⁸ The court held that Commissioner Kuhn did not act arbitrarily or capriciously in finding that these activities were not in the best interests of baseball, and that he was well within his powers under the Major League Agreement in nullifying the sale of players' contracts.⁶⁹ The court passed on the opportunity to second-guess the Commissioner's decision, noting that the only applicable standard is what the Commissioner felt would best protect baseball.⁷⁰ Absent malicious, arbitrary, or capricious behavior on the part of the Commissioner, which both that court and others had been

63. 569 F.2d 527 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978).

64. *Id.* at 537.

65. *Id.* at 531.

66. *Id.*

67. BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* 178 (1987).

68. *Id.*

69. *Finley*, 569 F.2d at 539.

70. *Id.* at 538. If the courts had meant to interpret that baseball had vested more limited authority in the Commissioner, they could have chosen to apply a stricter standard to that office. For example, the courts could have applied a reasonable person standard or a standard for persons entrusted to be custodians of another's business. Some critics have argued for the application of these standards. See Matthew B. Pachman, *Limits On the Discretionary Powers of Professional Sports Commissioners: A Historical and Legal Analysis of Issues Raised By the Pete Rose Controversy*, 76 VA. L. REV. 1409, 1427 (1990).

reluctant to find, the end of the line for players' contract decisions was with the Commissioner, not with individual team owners.⁷¹

2. Atlanta National League Ball Club v. Kuhn

The broad reading of the Commissioner's authority in *Finley* was largely upheld in *Atlanta National League Ball Club, Inc. v. Kuhn (Atlanta Braves)*.⁷² In *Atlanta Braves*, the Commissioner promulgated policies to facilitate negotiations between teams and players when players become free agents.⁷³ The guidelines designated time frames during which negotiations could occur, and prohibited ball clubs from making public statements that would imply they were interested in signing particular players.⁷⁴ In violation of the guidelines, the Atlanta ball club initiated negotiations with player Gary Matthews prior to the end of his option year with the San Francisco Giants.⁷⁵ In addition, Ted Turner, chief executive officer for the Atlanta ball club, made a statement at a cocktail party in New York indicating interest in Matthews, which was carried in San Francisco newspapers.⁷⁶ Because of these violations, the court held that the Commissioner acted within his authority in mandating that Ted Turner be banned from baseball for one year.⁷⁷

The court did not similarly uphold Kuhn's decision to deprive the Atlanta Braves of their first-round draft choice in the June 1977 amateur draft, finding that language in the Major League Agreement justified the disparate treatment.⁷⁸ The court followed the general rule that specific language in a contract should supersede generalized language.⁷⁹ Since the Major League Agreement specified several punitive measures in Article I, Section 3 that may be invoked against violators, those measures were deemed to be exhaustive rather than expansive.⁸⁰ The courts have not

71. *Finley*, 569 F.2d at 538.

72. 432 F. Supp. 1213 (N.D. Ga. 1977) [hereinafter *Atlanta Braves*].

73. *Id.* at 1215. "Free agents" are players who, having completed the specified term of their contract and having played (at their team's option) for one additional year, may negotiate with other teams for a playing contract. *Id.*

74. *Id.* at 1216.

75. *Id.*

76. *Id.* at 1217.

77. *Atlanta Nat'l League Baseball Club v. Kuhn*, 432 F. Supp. 1213, 1225 (N.D. Ga. 1977).

78. *Id.* at 1226.

79. *Id.* at 1224. See also *Charles O. Finley & Co v. Kuhn*, 569 F.2d 527, 535 (7th Cir. 1978).

80. *Atlanta Braves*, 432 F. Supp. at 1225 (citing the Major League Agreement, Art. I, § 3 (1975)).

similarly limited the meaning of the "remedial" and "preventive" powers of the Commissioner, holding that those powers can be invoked notwithstanding the violation of a Major League rule or an action involving moral turpitude.⁸¹ While the court established that contractual modifications can affect the scope of a Commissioner's authority, it was hardly a wholesale intrusion into the Commissioner's powers, and if anything, limited only the Commissioner's punitive authority.⁸² Therefore, it follows that because the Commissioner's remedial and preventive authority could not be limited in the *Atlanta Braves* case, at the time the *Vincent* case arose that authority should have stood particularly secure.

The *Atlanta Braves* court also pointed out that ball club owners were largely responsible for the authority vested in their Commissioner; the ball clubs' past unwillingness to modify contractual language in the Agreement inferred desire, or at least acquiescence, in being bound by whatever decisions the Commissioner made, even if they appeared arbitrary.⁸³ This acquiescence, coupled with the behavior of subsequent commissioners, firmly established that the powers associated with the Commissioner's office are largely unbridled.⁸⁴

E. The Extent of the Commissioner's Power

1. Baseball's Own Perspective On Its Commissioner's Powers

While a particular player or team owner may occasionally cry foul over a Commissioner's policy which negatively impacts him, Major League baseball, as a whole, has largely supported recent commissioners and their decisions.⁸⁵ Many have even been lauded. Peter Ueberroth, who served as Commissioner from 1984-1988, overruled a league vote in 1985 in order

81. *Finley*, 569 F.2d at 539. In the *Atlanta Braves* case, the Commissioner argued that the denial of the first-round draft choice had a remedial element. While the court readily admitted that it is difficult to draw lines as to what falls within these distinct enumerated powers, it endeavored to do so nevertheless. The court held that a line had to be drawn between the types of actions, and that since the San Francisco club received no benefit (which would be one of the underlying aims of a remedial action), the action taken by the Commissioner was more punitive than remedial in nature. *Atlanta Braves*, 432 F. Supp. at 1225-26.

82. See *Atlanta Braves*, 432 F. Supp. at 1225 (citing *American League Baseball Club v. Johnson*, 179 N.Y.S. 498, 505 (N.Y. App. Div. 1919)).

83. *Id.* at 1222.

84. See *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527 (7th Cir. 1978).

85. Murray Chass, *If Vincent's An Autocrat, the Owners Are To Blame*, N.Y. TIMES, July 9, 1992, at B14.

to allow broadcasting mogul Edward Gaylord to obtain a minority ownership interest in the Texas Rangers.⁸⁶ Although this action was not specifically within the scope of his powers under the Major League Agreement, he encountered none of the legal challenges which Vincent later faced.⁸⁷

Despite intermittent opposition based primarily on the interests of a few individuals, owners have continued to respect the role of the Commissioner and have tended to uphold a broad interpretation of the powers of that office.⁸⁸ Such acceptance may stem from the fact that the creation of the Commissioner's role saved baseball economically in 1921 and arguably continues to benefit it.⁸⁹ Acceptance of the Commissioner's vast powers has since become viewed as one of the integral features of the sport.⁹⁰ Even those viewing the Commissioner's authority most conservatively have called it expansive.⁹¹

2. Powers In Relation To Other Professional Sports Commissioners

It has long been posited that the powers of baseball commissioners are extremely malleable in comparison with those of other professional sports commissioners.⁹² The National Football League's Constitution and Bylaws lay out a seven page framework regarding the authority of the NFL Commissioner and place more concrete standards on that office's handling of disciplinary and business matters.⁹³ Furthermore, baseball is the only professional sport to enjoy exemption from federal antitrust laws, largely

86. *Owners Overruled One Month After American League Owners Rejected the Transaction*, Commissioner, N.Y. TIMES, Feb. 9, 1985, § 1, at 28.

87. Hal Bodley, *The Ueberroth Years*, U.S.A. TODAY, Mar. 29, 1989, at 1C.

88. Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 538 (7th Cir. 1978). In *Finley*, 21 of 25 signatories to the Major League Agreement testified as to their understanding of the Agreement, and the testimony was consistent with sweeping powers being vested in the Commissioner's office. *Id.*

89. SEYMOUR, *supra* note 15, at 343, 367. The owners benefitted economically in that by having a neutral party in control, public confidence in the fairness of the sport was aided. As a result, the public is seemingly more at ease investing money in the sport as a mode of entertainment. In addition, the role protects baseball from outside influences such as the federal government. See *infra* notes 170-86 and accompanying text. See also Jerome Holtzman, et al., *In Cost Squeeze, Baseball Charting the Unknown*, CHI. TRIB., Oct. 4, 1992, at 1C.

90. Holtzman, *supra* note 89, at 1C.

91. Chass, *supra* note 85, at B14.

92. See Pachman, *supra* note 70, at 1417-18.

93. *Id.* See also the NATIONAL FOOTBALL LEAGUE CONSTITUTION AND BYLAWS.

because of the perception that the independence of the Commissioner's office keeps team owners from monopolizing the industry.⁹⁴

3. The View of the Courts

Some commentators have contended that the Commissioner's powers, as a settled point of law, are virtually limitless.⁹⁵ Though the court in *Atlanta Braves* denied the Commissioner the authority to strip a baseball team of its first-round draft choice, it preserved its analysis of the office's power by asserting that there is little the Commissioner cannot do unless his actions substantially interfere with the rights of individual players.⁹⁶ Indeed, at least in a general respect, the Commissioner's decision did affect individual players because they would lose the opportunity to play for the Braves.

However, the recent treatment of the issue by Judge Conlon in *Chicago National League Ball Club v. Vincent*⁹⁷ suggests that, at least in that court's view, there may actually be a great deal the Commissioner cannot do. The decision, as this Comment will demonstrate, implies that future challenges could easily succeed if alternative language in either the Major League Agreement, the constitutions of the leagues, or the rules of baseball, would arguably advance a prospective plaintiff's position.⁹⁸ The decision abandons the view that the Commissioner is only barred from decisions affecting individual players, and paves the way for attacks by ball club organizations and corporations affiliated with them.

94. Robert G. Berger, *After the Strikes: A Reexamination of Professional Baseball's Exemption From the Antitrust Laws*, 45 U. PITT. L. REV. 209, 209 (1983). In fact, the particular power structure of organized baseball is so integral to the exemption that now the Senate is in the throes of deciding whether or not it should be continued in light of recent events. Alison Muscatine, *Baseball, Congress Not Exempt From Conflict*, WASH. POST, Jan. 4, 1993, at D2.

95. Durney, *supra* note 12, at 581.

96. *Atlanta Nat'l League Baseball Club v. Kuhn*, 432 F. Supp. 1213, 1225 (N.D. Ga. 1977).

97. No. 92-C4398, 1992 U.S. Dist. LEXIS 11033 (N.D. Ill. July 23, 1992) (vacated as moot Sept. 24, 1992).

98. *Id.* at *17.

III. CHICAGO NAT'L LEAGUE BALL CLUB V. VINCENT

A. Prelude—Labor Relations

Although the power of the Commissioner's office survived several serious challenges in the past and emerged virtually unscathed, Major League baseball is not above the dictates of change. By the spring of 1992, a coalition was formed by a group of owners who viewed the Commissioner's unlimited power as an untenable feature in a modern baseball market.⁹⁹ Commissioner Vincent was approached by several of these owners, who requested that he relinquish his broad powers over the sport with respect to the realm of labor relations.¹⁰⁰ The owners were worried that Vincent would not support their hardline positions and would intervene in labor negotiations to the benefit of the Major League Players' Association.¹⁰¹

The Commissioner refused to relinquish any power, relying on his legal rights under the Major League Agreement.¹⁰² This action frustrated those who had developed the relinquishment proposal,¹⁰³ and furthered a growing view among various ball club owners that the Commissioner was not adequately representing their interests.¹⁰⁴

B. The Mariners Fiasco

Friction mounted as a group representing a Japanese investor formulated a plan to purchase the Seattle Mariners.¹⁰⁵ There was substantial support by the National League for this transaction from the outset, due to the distressed financial condition of the Mariners; Vincent, however, was not impressed with the business opportunity as it was originally proposed.¹⁰⁶

Vincent noted that while the transaction may temporarily avert continued financial turmoil for the Seattle Mariners, approval of the deal

99. Murray Chass, *Vincent Repels Move To Cut His Powers On Labor*, N.Y. TIMES, June 10, 1992, at B9.

100. *Id.*

101. *See id.*

102. *Id.*

103. *Id.*

104. Chass, *supra* note 99, at B9.

105. *Owners To Consider Mariners Sale*, UPI (BC Cycle), Apr. 7, 1992, available in LEXIS, Nexis Library, UPI File.

106. *Id.*

would cut against the baseball's policy against foreign investment.¹⁰⁷ He reminded owners that the policy had been maintained in the interests of running the baseball business smoothly, surmising that off-shore investment could open a Pandora's box of new legal dilemmas for the sport.¹⁰⁸ Much of the response to Vincent was less than flattering. He was even called "xenophobic" and "racist" by some sportswriters.¹⁰⁹

A compromise was finally developed that allowed a sale to investor Hiroshi Yamauchi, conditioned on his preclusion from obtaining a controlling interest in the team.¹¹⁰ This eliminated some of the legal worries raised by Vincent and, at the same time, ensured that the Mariners would remain in Seattle.¹¹¹ However, once again, Vincent had shown that he was perfectly comfortable intervening in the business matters of the ball club owners, as much in acquisition transactions as in matters involving the Player's Association.

C. Realignment Friction

The issue of the National League's proposed realignment created further difficulties. Commissioner Vincent had long professed that he was uncomfortable with the geographic imbalance that had existed in the National League since the inception of divisional play in 1969.¹¹² The clubs had been seeking realignment prior to the onset of the 1993 baseball season, and met to vote on the issue just as the 1992 season was beginning.¹¹³

The realignment proposition was approved by a substantial majority.¹¹⁴ Only two of the existing twelve clubs opposed the realignment.¹¹⁵ However, according to the letter of the National League Constitution, the measure could not proceed despite such widespread approval.¹¹⁶ Specifi-

107. Bill Brubaker, *The Head of the Game, Faced With Trouble*, WASH. POST, Aug. 16, 1992, at D1. It should be clarified that Vincent was using "foreign" in the context of investors from outside North America. The National Baseball League has included teams from Canada since its inception, so Canadian investment would not give rise to the "foreign" issue.

108. *Id.*

109. *Id.*

110. See Chass, *supra* note 99, at B9.

111. *Id.*

112. Ross Newhan, *Vincent Orders A Realignment of NL*, L.A. TIMES, July 7, 1992, at C1.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

cally, one of the provisions of the National League Constitution states that no realignment proposal may be implemented without at least a three-fourths majority vote, and that no team may be moved without its consent.¹¹⁷ This provision was problematic since the Chicago Cubs, who would be transferred to the Western Division along with the St. Louis Cardinals under the realignment scheme, was one of the clubs which vehemently opposed the move.¹¹⁸

Concerned that the Cubs were singlehandedly thwarting a plan approved by the vast majority, a coalition of team owners requested the Commissioner to intervene.¹¹⁹ Bill White, President of the National League, received word of the developing coalition and the Commissioner's consternation over the problem.¹²⁰ White issued a statement to Vincent on June 8, 1992, which strongly urged Vincent to abstain from involvement in the realignment issue.¹²¹ White felt that while the Commissioner may feel strongly about the issue, challenging the Cubs would do irreparable damage to baseball. In retrospect, he was evidently correct.

Nevertheless, on July 3, 1992, Vincent announced that he was going to approve the realignment over the Cubs' objection because it was "in the best interests of baseball."¹²² It proved to be a decision he would later regret. The Cubs responded by commencing promised litigation.¹²³ On July 7, they filed a motion for a preliminary restraining order to prevent the realignment mandated by Vincent, on the grounds that he lacked the authority to unilaterally abrogate the National League Constitution.¹²⁴

The Cubs' request for an immediate injunction was rebuffed.¹²⁵ District Judge Conlon allowed the Commissioner adequate time to respond to the motion before making a ruling.¹²⁶ On July 23, however, after Vincent's attorneys had complied, Judge Conlon granted the injunction, holding that the Cubs would likely prevail on the merits of the case and

117. Newhan, *supra* note 112, at C1.

118. Murray Chass, *4 Teams To Change Divisions As Baseball's Map Is Redrawn*, N.Y. TIMES, July 7, 1992, at A1.

119. *Id.*

120. *See id.*

121. Vincent, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *4-5.

122. Newhan, *supra* note 112, at C1.

123. Larry Whiteside, *Cubs File Suit To Stay Put*, BOSTON GLOBE, July 8, 1992, at 69.

124. Ross Newhan, *Vincent Sued By Cubs To Halt Realignment*, L.A. TIMES, July 8, 1992, at C1.

125. *Judge Gives Vincent Time to Reply*, UPI (BC Cycle), July 8, 1992, available in LEXIS, Nexis Library, UPI File.

126. *Id.*

that by not issuing the injunction irreparable harm would be visited upon the team.¹²⁷

Judge Conlon found that the Cubs had a compelling interest in fostering and maintaining the traditional rivalries which had naturally developed over the years of playing baseball in the Eastern Division.¹²⁸ The Cubs successfully argued that by not remaining in their particular division and continuing to play a similar number of games against their usual opponents, the traditional rivalries would be threatened and spectator interest in the team would be impaired.¹²⁹ The judge felt that sparing the team, the league, and the public the possibility of a change in the Cubs' routine was enough to justify abrogating Vincent's realignment order.¹³⁰

IV. EFFECT OF THE COURT'S DECISION

A. *Changes In the Management of the Sport*

In *Vincent*,¹³¹ the court reasoned that where there are specific provisions for the resolution of problems in baseball's bylaws, the Baseball Commissioner's powers must be read in light of those provisions.¹³² In this particular case, the district court found that the Commissioner's powers in realigning the National League were very limited, given that the National League Constitution (NLC) expressed a specific avenue for resolving issues of realignment.¹³³ The court reasoned that since the NLC addressed the issue, there was no other avenue available to achieve realignment.¹³⁴ In fact, the court stated that the Commissioner must be precluded from affecting the process, because for him to do so would compromise the rights of a particular ball club which had used anti-majoritarian protections of the league's constitution to save itself from the perceived evils of realignment.¹³⁵

127. *Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *17-18.

128. *Id.* at *19.

129. *Id.*

130. *Id.*

131. No. 92-C4398, 1992 U.S. Dist. LEXIS 11033.

132. *Id.* at *17 (citing Major League Agreement, Art. VII (1975)). The provisions Judge Conlon referred to included both Article VII of the Major League Agreement and from supplementary provisions as well. *Id.*

133. *Id.*

134. *Id.* at *16-17.

135. *Id.* at *17.

The court's treatment of the issue was not completely novel, but rather one which had been largely ignored in the past. The court in *Atlanta Braves*, for example, used the language of the Major League Agreement itself, which set out specific punitive powers endowed to the Commissioner, as a proclamation of the extent of his punitive authority.¹³⁶

In *Vincent*, by contrast, the court juxtaposed the language of a broad provision in the Major League Agreement with a provision found in the NLC.¹³⁷ Judge Conlon reasoned that the Baseball Commissioner's far-reaching prerogatives are limited when pitted against the constitutions of the individual major leagues.¹³⁸ The court stated that business management and practices which are specifically governed by the NLC should be impervious to attack.¹³⁹ The basis of the reasoning was also located in the NLC, where it states that the Commissioner may settle any disputes "other than those whose resolution is expressly provided for by another means in . . . the [Major League] constitution."¹⁴⁰

On the surface, it may appear Judge Conlon made a logical determination. Holding otherwise would seemingly authorize future baseball commissioners to unilaterally abrogate the National League Constitution and any other documents that they believe compromise their broad "best interests" powers. If baseball commissioners found many acts, transactions, and practices not in the best interests of baseball, a growing number of team owners may suddenly find their contractual rights inhibited.

Judge Conlon was clearly apprehensive about such possibilities, and developed a classification to prevent such occurrences in future cases. She ruled that a realignment vote could not come within the purview of "an act, transaction, or practice" as defined in the Major League Agreement.¹⁴¹ Instead, Conlon's opinion drew a distinction between questionable conduct subject to the Commissioner's judgments and contractual rights held by individual club owners.¹⁴² Contractual rights, according to Conlon, could not be equated with "conduct [or misconduct] for the Commissioner to investigate, punish, or remedy."¹⁴³ Instead, contractual rights are a

136. *Atlanta Nat'l League Baseball Club v. Kuhn*, 432 F. Supp. 1213, 1225 (N.D. Ga. 1977) (citing Major League Agreement, Art. I, § 3 (1975)).

137. *Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *13-14.

138. *Id.*

139. *Id.* at *13.

140. *Id.* at *16.

141. *Id.* at *14.

142. *Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *14.

143. *Id.*

standard element of business decision-making and therefore may stand up against the Commissioner's authority.¹⁴⁴

B. Short-Sighted Consideration

1. Possibility of Waiver

Despite the court's plausible reasoning, the judge discounted the dynamics of the Commissioner's relationship to the Major League team owners. In 1976, Commissioner Kuhn proceeded to overturn the National League's rejection of Major League expansion.¹⁴⁵ As already mentioned, Peter Ueberroth acted in a similar fashion by approving minority ownership of the Texas Rangers in 1985.¹⁴⁶ Judge Conlon found that previous instances of deference to past commissioners failed to warrant deference in this situation.¹⁴⁷ She distinguished prior incidents on the grounds that "[t]hese incidents did not arise under comparable factual circumstances and implicated different constitutional provisions."¹⁴⁸

However, by finding that these past acquiescences had inconsequential evidentiary value, the court precluded itself from exploring the possibility that the Commissioner's powers may now extend beyond the letter of the Major League Agreement.¹⁴⁹ Consequently, the court overlooked the very real possibility that these past acquiescences may have in fact constituted waivers of clubs' contractual rights.¹⁵⁰

A waiver of a contractual right may occur where parties have elected to "dispense with something of value or to forgo some advantage which one might, at his option, have demanded."¹⁵¹ To be effective as a waiver, the party or parties who are relinquishing rights must have knowledge or awareness that they are about to do so.¹⁵² Clearly, in the countless interferences by previous baseball commissioners, team owners could have then asserted that those commissioners were overstepping their bounds.

144. *Id.* at *17.

145. *Id.* at *16.

146. *Sports People: Owners Overruled One Month After American League Owners Rejected the Transaction*, N.Y. TIMES, Feb. 9, 1985, § 1, at 28.

147. *Vincent*, No. 92-C4398, 1992 U.S. Dist. LEXIS 11033, at *14.

148. *Id.* at *16.

149. *Id.*

150. Chass, *supra* note 118, at A1.

151. BALLENTINE'S LAW DICTIONARY 1356 (3d ed. 1969).

152. *Id.*

Under the Major League Agreement, the owners had the option, at the end of any Commissioner's term, to prevent subsequent commissioners from taking undesired actions by amending either the Major League Agreement or one of the league constitutions.¹⁵³ At times they have taken advantage of this option. On the whole, however, instead of making changes or remedying areas of conflict, the owners have left the playing field of the Major League baseball business intact.

The *Atlanta Braves* court even indicated that the encouragement or approval by league members for action taken by the Commissioner may create a prima facie case for the validity of such action.¹⁵⁴ Where teams or owners have in the past applauded the actions taken by commissioners, this approval can be used to show that they understood this power was within the Commissioner's realm.¹⁵⁵ In fact, in the *Finley* case, the judge specifically noted the plaintiff's past approval of the Commissioner's broad and unfettered powers.¹⁵⁶

By ignoring the rights the owners had available to them, Judge Conlon may be attaching unwarranted importance to the provision of the National League Constitution which allows any team to unilaterally block a proposed league realignment because its interests would be affected. Perhaps a point exists where the interests of individual teams, while obviously protected from majoritarian influence, must yield to the Baseball Commissioner's rationale for what constitutes the "best interests of baseball." Such an analysis may serve as a more fitting protection where the overriding goal in protecting teams in the first place is to promote fairness. Now, with the case vacated, the team owners will be able to restructure the position and effectively change the terms of their contract by unilateral action.

2. Failure To Recognize the Real Interests

The *Vincent* court failed to properly evaluate the issues because it did not recognize the actual basis of the conflict between the parties involved. Had it done so, it would have reached a result which would have squared better with what the framers of both the Major League Agreement and the league constitutions must have intended when they entered into those agreements.

153. Chass, *supra* note 85, at B14.

154. *Atlanta Nat'l League Baseball Club v. Kuhn*, 432 F. Supp. 1213, 1221 (N.D. Ga. 1977).

155. *Id.*

156. *Charles O. Finley v. Kuhn*, 569 F.2d 527, 537-38 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978).

While the Cubs argued that it was traditional team rivalries which would be disadvantaged by failure to decide in their favor,¹⁵⁷ this was not, in reality, their most pressing concern. Actually, the potential loss of cable television revenues was the most fundamental issue.¹⁵⁸ The Cubs are owned by the Tribune Company, which, in addition to owning Chicago's major newspaper, controls the cable superstation which broadcasts the team's games.¹⁵⁹ Estimates revealed that ratings losses would be incurred due to the Cubs playing Western Division teams.¹⁶⁰ The starting game times for Western Division teams would be later, and the potential viewing audience in Chicago would be diminished.¹⁶¹ This loss has nothing to do with the game of baseball itself, but instead affects a business owned by a private entity that relies on Major League baseball to create a demand for its product.

In the 1970's cases involving Commissioner Kuhn, one of the underlying reasons the Commissioner prevailed was that he clearly articulated the actions he took were done to protect the integrity of the game and the trust and expectations of the American public.¹⁶² While allowing the sale of player contracts would have benefitted the Oakland Athletics, the rest of baseball stood to lose. The long-term interest of the public would have been stifled since only wealthy teams—not those utilizing strategy and skill to win—would stand to dominate the industry.¹⁶³

It follows that if the cable television industry, rather than the sport's organizers, influence how the sport is played, the "national pastime" image that baseball has managed to preserve for so long could conceivably be frustrated. Over the course of seventy years, the sport has thrived, in part due to its ability to downplay its status as a multi-million dollar business and package itself in a way that appeals to the public's notions of goodwill, fairness, and being American.¹⁶⁴ Fans are bound to be disappointed, and the public generally disconcerted, by the fact that the National League

157. Murray Chass, *Cubs, In Court, Get Reprieve From Realignment*, N.Y. TIMES, July 24, 1992, at B9.

158. Newhan, *supra* note 112, at C1.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Finley*, 569 F.2d at 537.

163. *Id.*

164. *See* CHARLES C. ALEXANDER, *OUR GAME: AN AMERICAN BASEBALL HISTORY* 129, 266 (1991).

Constitution is being used to facilitate the cable television industry rather than the sport itself.

The *Atlanta Braves* court was willing to read the Commissioner's powers very broadly to ensure that baseball's image was preserved; Judge Conlon failed to follow that precedent any further, instead restricting those powers so tightly that the "gloss" provided by the intent of baseball's bylaws will be of lessened importance. She opted to strictly interpret the provisions, resulting in the dismantling of the sport's power structure.

Judge Conlon interpreted a fragment of the *Atlanta Braves* case, which limited the Commissioner's punitive powers to those enumerated, as an underpinning for her position. In reality, however, while the punitive powers were more clearly defined in *Atlanta Braves*, the preventative and remedial powers were arguably strengthened.¹⁶⁵ In that case it was admitted that those provisions are not as tangible as the punitive measures, especially for an outside arbitrator unfamiliar with the aims of the baseball code.¹⁶⁶

Judge Conlon viewed other provisions within the baseball bylaws as contractual rights and beyond the scope of the code.¹⁶⁷ However, in *Landis*, the court's opinion is clear that the judiciary should not draw such lines. The court said that the language of the baseball code "expressly provided that nothing contained in the code shall be construed as exclusively defining or otherwise limiting acts, practices, or conduct detrimental to baseball."¹⁶⁸

The *Landis* court also stated that anything destructive of the code's aims could conceivably be viewed as detrimental conduct.¹⁶⁹ In fact, the Commissioner was seen as having a "necessary and proper" line of power to uphold the "morale of the players and the honor of the game." This second reference to the honor of the game is particularly interesting when pitted against the case at hand. The honor of the game is exactly what will suffer if the interests of the cable television industry are placed before those of baseball. The underlying purpose in appointing a Baseball Commissioner was to vest in him jurisdiction to assure "the integrity of the game

165. See *supra* notes 80-82 and accompanying text.

166. *Finley*, 569 F.2d at 537. The court used the wide aims of the baseball code as another argument for applying judicial restraint in the matter. The court stated: "Standards such as the best interests of baseball, the interests of the morale of the players and the honor of the game, or 'sportsmanship which accepts the umpire's decision without complaint,' are not necessarily familiar to the courts and obviously require some expertise in their application." *Id.*

167. See *supra* notes 141-43 and accompanying text.

168. *Milwaukee Am. Ass'n v. Landis*, 49 F. Supp. 298, 302 (N.D. Ill. 1931).

169. *Id.*

and the maintenance of public confidence in it."¹⁷⁰ This aim—preserving the national pastime image of Major League baseball—would inevitably be tarnished.

C. Repercussions: Possible Loss of Antitrust Exemption

In the wake of Judge Conlon's decision, eighteen of the twenty-seven Major League club owners felt sufficiently empowered to request Fay Vincent's resignation, a request with which he eventually complied.¹⁷¹ The owners have since utilized the historic opportunity to analyze the role of the office and retool it for the modern era.¹⁷² The results of that undertaking stand to damage organized baseball as it is now conceived, unless done carefully and with an eye toward the consequences of having a Commissioner with merely illusory powers.

One prominent feature of Organized Baseball which may readily face destruction is its prized exemption from federal antitrust laws.¹⁷³ The United States Senate, upon the news of the Commissioner's departure, reacted almost instantly with alarm.¹⁷⁴ A bipartisan group of senators from the Senate Judiciary Committee, because it felt the ouster of Vincent signaled that baseball owners were abusing the industry, decided to conduct extensive hearings.¹⁷⁵ Since the antitrust exemption was granted to baseball largely because of the assurance that the sport would not be monopolized or mismanaged like other industries, the need for the continued exemption was questionable.¹⁷⁶ Senator Howard Metzenbaum commented: "It's big business, very big business, and holds many players in human bondage. Baseball plays the same kind of hardball as those in

170. *Id.* at 299.

171. Chass, *supra* note 6, at B7.

172. Claire Smith, *Coming Eventually: A New Commissioner*, N.Y. TIMES, Dec. 19, 1992, § 1, at 34.

173. Antitrust acts are designed for the purpose of preventing industries from unlawful restraints, monopolies, and price fixing. BLACK'S LAW DICTIONARY 94 (3d ed. 1990).

174. Charley Roberts, *Senate Panel To Question Baseball's Antitrust Status*, L.A. DAILY J., Sept. 11, 1992, at 1. Interestingly, the alliance of senators in favor of revoking the antitrust exemption is very bipartisan in nature, including its most outspoken advocates: Democrats Howard Metzenbaum (Ohio) and Bob Graham (Florida) and Republican Connie Mack (Florida). Alison Muscatine, *Senators Put Complaints On Record*, WASH. POST, Dec. 11, 1992, at F8.

175. Roberts, *supra* note 174, at 1. See also Alison Muscatine, *Baseball, Congress Not Exempt From Conflict*, WASH. POST., Jan. 4, 1992, at D2.

176. Roberts, *supra* note 174, at 1.

other businesses, so what makes baseball so unique?"¹⁷⁷ The Senate also seems concerned about the effects of recent events on the public trust in the integrity of baseball—a concern expressed by Senator Patrick Leahy, who stated the revocation of the exemption "would strike a responsive chord in this country."¹⁷⁸

The Senate hearings were conducted in December 1992, with witnesses including Fay Vincent and interim head of Baseball's Executive Committee, Bud Selig.¹⁷⁹ The senators berated club owners for the mismanagement of the sport.¹⁸⁰ Their concern was legitimately bolstered by the fact that since the interim period began, the owners have acted questionably by backing out of a contract with St. Petersburg, Florida, concerning the Giants baseball team.¹⁸¹ Moreover, they failed to take prompt disciplinary action in regards to allegedly racist comments made by Cincinnati Reds team owner Marge Schott.¹⁸² The former Commissioner testified before the Senate that had he, or someone with equal authority, been in power at the time, the disciplinary process could have been swiftly invoked against Schott.¹⁸³

The inability of the baseball industry to manage these continuing issues could weigh heavily with the Senate. The result may be the removal of the exemption and the application of federal antitrust laws to baseball in order

177. Jerome Holtzman, *Baseball Hit Hard On the Hill*, CHI. TRIB., Dec. 11, 1992, Sports, at 1.

178. Roberts, *supra* note 174, at 1. Only a handful of senators actively advocated continuing the antitrust exemption. They were newly-elected Senator Dianne Feinstein and Senator-elect Barbara Boxer, both California Democrats. Holtzman, *supra* note 177, at 1. However, their reasoning stemmed primarily from the fact that the city of San Francisco, California, will benefit economically from the Giants' inability to relocate to St. Petersburg, Florida. Stripping baseball of the antitrust exemption would allow such relocations to proceed with a greater degree of success. *Id.*

179. Muscatine, *supra* note 174, at F8.

180. Claire Smith, *Baseball Executives Are Taken To Task*, N.Y. TIMES, Dec. 11, 1992, at B9.

181. Mike Dodd, *Antitrust Status Likely To Hold Up*, U.S.A. TODAY, Nov. 25, 1992, at 7C.

182. Muscatine, *supra* note 175, at D2.

183. *Id.* Disciplinary action was eventually implemented by the interim governing board of Organized Baseball. On February 4, 1993, the Executive Committee suspended Schott from baseball for the period of one year, and fined her \$25,000. Mark Maske, *Baseball Suspends Schott One Year For Racial Slurs*, WASH. POST, Feb. 4, 1993, at A1. However, this discipline comes months after the incident; moreover, as one reporter has described it, Schott will still be able to attend the Reds' home games as long as she sits in the upper deck of the executive suites, and the fine amount roughly equals the profit margin on "five innings worth of beer sales in Riverfront Stadium." Thomas Boswell, *Crime and No Punishment*, WASH. POST, Feb. 4, 1993, at D1.

to regulate its activities to the same extent that other major league sports and interstate corporations are regulated.

If the antitrust exemption is stripped from Major League baseball, the entire way the sport operates will need to be revamped.¹⁸⁴ This is a fate that many legal scholars and legislators feel is long overdue,¹⁸⁵ given the changes since the exemption was first upheld in 1922. Baseball has long since crossed state borders, and now stands as an anomaly and aberration when compared to the football, basketball, and hockey leagues.¹⁸⁶ Most find that there is no philosophical or practical reason for the exemption, but rather explain its continued existence by the fact that the game stands alone as a "national pastime."¹⁸⁷ One commentator has stated that the exemption is "anachronistic, upholding a privileged status for a single, small group of wealthy sportsmen, founded on no substantive logic except tradition—[and] has been an example of both *stare decisis* carried too far and of narrow commercial interests and sentiments overthrowing the requisites of judicial objectivity."¹⁸⁸ Indeed, from a business perspective, there is really nothing different between baseball and any other major league sport.

Of course, both the United States Supreme Court and the Senate have previously reviewed the antitrust exemption, and despite philosophical misgivings, have never revoked it.¹⁸⁹ But even if the Senate does not revoke the exemption itself, the exemption will remain in danger of being removed pending a court battle. Presently the most likely plaintiff is the city of St. Petersburg, which could bring a breach of contract claim against Major League baseball.¹⁹⁰

Additionally, traditional problems associated with baseball governance may augment any antitrust problems. Pressing issues which might stir dissention include salary caps for players and revenue sharing on television deals between the teams.¹⁹¹ These issues may prove quite problematic for the owners to solve on their own. One owner, when asked about the ability

184. Roberts, *supra* note 174, at 1.

185. Muscatine, *supra* note 175, at D2.

186. Roberts, *supra* note 174, at 1.

187. Muscatine, *supra* note 175, at D2 (noting that "[t]he Supreme Court has intimated that there is no longer any basis for [the antitrust exemption] but has been unwilling to overturn the [precedent], leaving the issue for Congress").

188. Berger, *supra* note 94, at 209.

189. Muscatine, *supra* note 175, at D2.

190. Dodd, *supra* note 181, at 7C.

191. Jason Stark, *Vincent's Departure May Spark Diamond Revolution*, CALGARY HERALD, Sept. 11, 1992, at D5.

of the owners who ousted Vincent will remain solidified in solving other issues, remarked: "Until the next vote. The coalition has too many inconsistencies."¹⁹²

V. CONCLUSION

Baseball owners need to heed warnings about the sport's possible future, or the era of the Commissioner's office may become a relic of the past. If recent remarks about merely reviewing the position rather than restructuring it are true,¹⁹³ the owners may be starting to take note. Although the *Vincent* case has been vacated, it has damaged the scope of the Commissioner's authority indefinitely. The decision allowed disgruntled team owners the opportunity to force an elected Commissioner out of office before the expiration of his term. An embattled Fay Vincent resigned from his office due to the result in *Vincent* case.

The judge rejected over seventy years of clear precedent as to the scope of the Commissioner's authority. Furthermore, the twenty year interim between 1944 and 1964, when the powers of the office fell into virtual disuse, stands as a poignant reminder of how important it is to the sport's welfare and image to have a strong commissioner. The effect of baseball's past acquiescence to the Commissioner has likewise been undermined by the decision, even though such acquiescence says much about how the power figures involved in the industry have always related.

The court has also passed over the opportunity to reach a viable method of balancing the welfare of baseball itself against the welfare of businesses which rely on it and exploit it to some extent. The question remains open as to how far the cable television industry, and other businesses that control or influence major league teams, may go in effecting how baseball is managed. Consequently, this lack of clarification will be inviting to many business interests which are not necessarily parallel to, and perhaps in complete opposition to, the public's confidence and interest in preserving an honorable national pastime.

The league owners are now in the process of reformulating the Commissioner's office, and in so doing, appear to be planning a structure for the future of baseball which will depart from the experience of the last seventy years. While the judge's decision in this case is somewhat

192. Murray Chass, *Anti-Vincent Ownership Is Facing Follow-Through*, N.Y. TIMES, Sept. 9, 1992, at B7.

193. Smith, *supra* note 180, at B9.

problematic, it is merely a symptom of problems that must be resolved between how the Commissioner's office and league owners relate.

This will prove to be no small challenge, especially as the owners attempt to avoid a multitude of possible problems, including the possibility of losing the federal antitrust exemption. Since that privilege already rests on precarious ground, the owners will be hard-pressed to find a workable solution to this problem. How an organization as huge as Major League baseball, which has relied on the extensive power of the Commissioner for so long, will effectively function without it remains to be seen.

The league owners may find that they are walking a tightrope between grasping control of the sport and ensuring that it continues to be managed in an economically suitable manner. They will have to reach resolutions, something which may be hard to accomplish when they have not had the opportunity. They may soon find, as the courts have, that the concepts of insuring the "morale of players" and the "honor of the game" are not necessarily goals that can be easily reached. They have destroyed the very instrument which was designed to handle the difficult decisions that are connected to those overriding concerns.

*Craig S. Pedersen**

* This Comment is dedicated in memory of Albert W. Christensen, who loved baseball, and Priscilla Christensen, who loved to see justice done. The author would like to thank the following people: his dad, whose love and support made law school a reality; his mom, for her love, and for being the first to introduce him to the beauty of the written word; editors Greg Schenz, Debra Klevatt, and John Gehart, for their assistance and commitment; and Kurt, Jane, Kelly, James, and Dominique, each of whom should know why.

